

Powell, Robert Keith

December 10, 2014

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

-----:
J.J. POWELL, INC., :
Plaintiff, :
 : Civil Action No.
vs. : 1:13-cv-00353-LJB
 :
 :
THE UNITED STATES, :
Defendant. :
-----:

DEPOSITION OF J.J. POWELL, INC. THROUGH ITS
DESIGNEE ROBERT KEITH POWELL
State College, Pennsylvania
Wednesday, December 10, 2014
9:33 a.m.

Reported by: Stacey L. Daywalt

Henderson Legal Services, Inc.

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1 Deposition of J.J. Powell, Inc. through its

2 designee ROBERT KEITH POWELL taken

3 at:

4 Magisterial District Court, 49-1-01

5 131 South Fraser Street, Suite 5

6 State College, Pennsylvania 16801

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8 Pursuant to notice, before Stacey L.

9 Daywalt, Notary Public in and for the Commonwealth
10 of Pennsylvania.

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

CLOYD F. VAN HOOK, ESQUIRE
GUARISCO & GORDES, LLC
601 Poydras Street, Suite 2355
New Orleans, Louisiana 70130-6008
(504) 587-7007

ON BEHALF OF DEFENDANT:

JENNIFER DOVER SPRIGGS, ESQUIRE
U.S. DEPARTMENT OF JUSTICE
555 4th Street NW, Room 8116
Washington, DC 20044
(202) 307-0840

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1 P R O C E E D I N G S

2 Thereupon,

3 ROBERT KEITH POWELL,

4 was called as a witness by Counsel for the
5 Defendant, and having been duly sworn by the Notary
6 Public, was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR DEFENDANT

8 BY MS. SPRIGGS:

9 Q. And could you state your name for the
10 record?

11 A. Robert Keith Powell.

12 Q. And could you spell your last name?

13 A. P-O-W-E-L-L.

14 Q. My name is Jennifer Spriggs, and I'm here
15 today on behalf of the United States with respect
16 to a lawsuit that's been filed by J.J. Powell, Inc.
17 versus the United States. You've been called here
18 today to testify with respect to that lawsuit.

19 Have you been designated to testify on
20 behalf of J.J. Powell, Inc.?

21 A. Yes.

22 Q. Do you have a written designation?

23 A. Yes.

24 Q. So it says, "Keith Powell will testify
25 for the plaintiffs on all matters relevant to this

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1 action except the preparation of Forms 8849, the
2 Claim For Refund of Excise Tax."

3 **A. That's correct.**

4 Q. So are you prepared to testify on the
5 matters set forth in the designation?

6 **A. Yeah.**

7 Q. Have you had your deposition taken
8 before?

9 **A. I think so.**

10 Q. How many times?

11 **A. Maybe once or twice.**

12 Q. Okay. Well, today we have a court
13 reporter here. She's transcribing what we say.

14 So if you will wait until I finish my
15 question so that we don't overlap, because she's
16 trying to take down what we say. And she will need
17 for you to answer verbally because she needs to be
18 able to transcribe what you say. So if you nod,
19 she can't transcribe that.

20 If you don't understand any question I
21 ask, let me know and I'll try to rephrase it.

22 Is there any reason today that you're not
23 able to testify?

24 **A. No.**

25 Q. And if you need a break or anything like

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1 that, just let me know.

2 This deposition is taken pursuant to the
3 rules of o the Court of Federal Claims.

4 And where are you currently employed?

5 **A. J.J. Powell, Incorporated.**

6 Q. And could you give your business address?

7 **A. 109 West Prescott Street, Philipsburg,**
8 **Pennsylvania 16866.**

9 Q. And what is your job title?

10 **A. Vice president.**

11 Q. And how long have you been vice
12 president?

13 **A. Eighteen years.**

14 Q. And where were you employed before J.J.
15 Powell?

16 **A. Nowhere.**

17 Q. Okay. And what are your responsibilities
18 as the vice president?

19 **A. My responsibilities include accounting,**
20 **operations of convenience stores, petroleum sales**
21 **and the oversight of Human Resources.**

22 Q. And did you attend college?

23 **A. I did.**

24 Q. And where did you attend college?

25 **A. Clarion University.**

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1 Q. And where is that located?

2 A. **Clarion, Pennsylvania.**

3 Q. And when did you graduate?

4 A. **1990.**

5 Q. And what was your degree in?

6 A. **B.S. in finance.**

7 Q. Do you have any graduate education?

8 A. **I do.**

9 Q. And what degree do you have?

10 A. **I don't have a degree.**

11 Q. Okay. What is the graduate education?

12 A. **Some Master's classes at University of**
13 **Phoenix.**

14 Q. Okay. In what field?

15 A. **Business.**

16 Q. And do you have any professional
17 licenses?

18 A. **I do not.**

19 Q. When you graduated from college, when did
20 you -- where did you start to work?

21 A. **J.J. Powell.**

22 Q. And what was your job when you started?

23 A. **Head floor sweeper.**

24 Q. Okay. And how long did you do that?

25 A. **A few years. Still do it today when I**

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1 **need to.**

2 Q. During the periods in issue in this case,
3 which are the fourth quarter of 2009 through the
4 fourth quarter of 2010, could you describe what
5 J.J. Powell's business -- what business it's in?

6 A. **Sure. We're in the petroleum**
7 **distribution business.**

8 Q. So when you say "distribution," what does
9 that mean? Are you a wholesaler?

10 A. **We sell petroleum to -- primarily, to end**
11 **users, and we deliver it in a number of ways,**
12 **anywhere from a full tractor trailer load of fuel**
13 **down to someone pulling in to a gas station or a**
14 **cardlock fueling facility where they can get as**
15 **little as a gallon.**

16 MS. SPRIGGS: Before we go on, could you
17 mark this as Deposition Exhibit 1.

18 (Powell Deposition Exhibit No. 1 was
19 marked for identification.)

20 BY MS. SPRIGGS:

21 Q. You were explaining how you delivered the
22 fuel to the end users.

23 And you said you deliver by truck?

24 A. **We deliver by truck, tractor trailer. We**
25 **deliver by small truck, which can deliver anywhere**

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1 from 3,000 gallons to a percentage of a gallon.

2 We have gas stations. We have cardlock
3 fueling facilities. And we also deliver some
4 lubricants.

5 But primarily as far as the fuel
6 distribution goes, those four methods are the
7 primary methods that we employ.

8 Q. And who are your end users? In the
9 majority of your end users, who are they?

10 A. The majority? As far as a customer
11 account or as far as --

12 Q. Yes.

13 A. As far as a customer account, would
14 probably be heating oil customers.

15 Q. You mentioned different -- you said you
16 have gas stations?

17 A. We do.

18 Q. And then you said you have a cardlock
19 system?

20 A. Yes.

21 Q. Could you explain just the difference?

22 A. Sure. The difference, a gas station is a
23 manned facility where there are cashiers and
24 typically a store combined with gas pumps.

25 The cardlock facility is an unmanned

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1 facility that stands alone without a store that
2 just has fuel pumps. An end user has a card that
3 will turn the pumps on and accesses those, any one
4 of those gasoline or diesel pumps, to put that fuel
5 into the vehicle they're driving.

6 Q. So you have gas stations, cardlock system
7 and then you deliver by truck?

8 A. Mm-hmm.

9 Q. So those are the three basic ways that
10 you deliver?

11 A. That's correct.

12 Q. Now, if you go to a gas station, these
13 gas stations are -- what are they called?

14 A. Snappy's Convenience Stores.

15 And I guess to maybe try and help you
16 out, there are no nontaxable sales there.

17 Q. Okay. Would anything identify J.J.
18 Powell if you go to a Snappy's Convenience Store?

19 A. No.

20 Q. So they just -- so the customer goes to
21 Snappy's Convenience.

22 And how are they billed?

23 A. They are not billed. They either pay
24 with cash or use their credit card.

25 So it's all -- the transaction is

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1 **conducted there, and there's no accounts**
2 **receivable.**

3 Q. Okay. If you get an invoice -- if you're
4 at a Snappy's Convenience and you get an invoice or
5 receipt when you purchase the fuel.

6 So are the pumps -- so the fuel in the
7 pumps at Snappy's Convenience are provided by J.J.
8 Powell?

9 **A. They are.**

10 Q. So all of the pumps are only -- so J.J.
11 Powell is the only person providing the fuel at
12 Snappy's Convenience?

13 **A. Yes.**

14 Q. So if I go to Snappy's Convenience, I
15 purchase gas for my car, I typically would get a
16 receipt that says the number of gallons I purchased
17 and the price?

18 **A. Correct.**

19 Q. And that's it?

20 **A. Right.**

21 Q. There's nothing about tax on the receipt?

22 **A. No.**

23 Q. So the person at Snappy's will get a
24 receipt that says gallons purchased and price?

25 **A. Exactly, pretty much like any other gas**

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1 **station in the country.**

2 Q. So if you go to the cardlock system, who
3 uses the cardlock system?

4 **A. Those are typically commercial customers,**
5 **businesses, government entities.**

6 Q. If one of your customers is a part of
7 your cardlock system, can they also go to Snappy's?

8 **A. No.**

9 Q. Okay. So they have to go to a cardlock
10 station? Is that what you call it?

11 **A. Correct.**

12 Q. So if your customer goes to the cardlock,
13 they purchase gas, does the receipt say gallons
14 purchased and show a price?

15 **A. No.**

16 Q. It doesn't show a price per gallon?

17 **A. They don't get a receipt.**

18 Q. Okay. So no receipt.

19 So what do they get?

20 **A. At the end of the billing period, they**
21 **get an invoice.**

22 Q. And is there -- do you have a standard
23 billing procedure or does --

24 **A. I do.**

25 Q. So for your cardlock, when would they

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1 receive a bill?

2 **A. We've got a number of different billing**
3 **cycles, but typically it would be twice a month.**

4 Q. And then what would they -- so when they
5 receive their invoice for the cardlock system, what
6 does it say?

7 **A. It would -- it shows each individual**
8 **transaction with the gallons purchased, the price**
9 **per gallon, the total of the transaction and**
10 **whether or not there are taxes included or no tax.**

11 Q. Now, what do you mean when you say it
12 shows whether tax is included or no tax?

13 **A. On the taxes that are -- on the**
14 **transactions that are taxable, the note says "all**
15 **tax," and on the transactions that are nontaxable,**
16 **it says "no tax."**

17 Q. Well, what does that mean in terms of --
18 you say there's a price?

19 **A. Mm-hmm.**

20 Q. You say there are gallons and there's a
21 price per gallon?

22 **A. Mm-hmm.**

23 Q. Which is the same thing that the customer
24 at Snappy's, he will have a price and number of
25 gallons?

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1 **A. Yep.**

2 Q. There's no -- there's no tax when you go
3 to Snappy's?

4 **A. No, there's no tax that shows up, but the**
5 **tax is included in the price.**

6 Q. Okay. The tax is included in the price
7 at Snappy's?

8 **A. Yes.**

9 Q. And so for your cardlock people or
10 customers, so is --

11 **A. I'd be happy to show you, if that helps.**

12 Q. Well, I'm trying to understand just the
13 procedure of what the --

14 **A. It's just the billing is different.**
15 **There is -- it's two different systems.**

16 Q. But you are giving -- the cardlock
17 customer does get a price per gallon?

18 **A. Yes.**

19 Q. And then you say something about whether
20 taxes included or taxes not included.

21 So some of your cardlock customers are
22 taxed?

23 **A. Correct.**

24 Q. And then some are not?

25 **A. Correct.**

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1 Q. So if a cardlock customer is taxed, then
2 the receipt will show -- what will it show?

3 A. All tax.

4 Q. And then will there be a number?

5 A. No.

6 Q. No number?

7 A. No.

8 Q. So what does that mean in terms of the --
9 so does the price --

10 A. That means there are taxes included in
11 the price.

12 Q. So that means that the price they're
13 charged per gallon includes tax?

14 A. Tax.

15 Q. Now, for your tax exempt customers who
16 use cardlock, then what does their -- what would
17 their receipt show?

18 A. No tax.

19 Q. So it will show a price per gallon?

20 A. Correct.

21 Q. Number of gallons. And then it will say
22 no tax.

23 And what does that mean?

24 A. That means there are no taxes included in
25 the per gallon price.

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1 Q. So if you -- in your cardlock system, you
2 have prices -- you have different prices for
3 different customers?

4 A. Rarely. The price of the fuel is rarely
5 different. The total price between the taxable and
6 the nontaxable customer is different by the amount
7 of the tax.

8 Q. Well, as I'm understanding this system as
9 you describe it, the tax -- whether or not the tax
10 is included has to do with the price that's being
11 charged per gallon, because you said there are only
12 two things really on the receipt, gallons and
13 price; so the price either includes tax or doesn't
14 include tax.

15 A. Correct.

16 Q. So if you have nontaxable customers
17 purchasing gas or diesel fuel in your cardlock
18 system, then is their price in your cardlock system
19 different from the price for your commercial --
20 your commercial taxable customers?

21 A. The price is different by the amount of
22 the taxes, by an amount equal to the taxes that are
23 not being charged to that tax exempt customer.

24 Q. So the price per gallon will be
25 different?

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1 **A. Correct.**

2 Q. So later on we'll try to go through and
3 look at some of the invoices, and so we should be
4 able to see for your commercial not taxable
5 customers a different price for gas per gallon than
6 the exempt entities?

7 **A. Exactly.**

8 Q. In this cardlock -- could you explain
9 what this cardlock system is?

10 **A. It is a standalone fueling facility that**
11 **includes tanks underground, pumping system, gas**
12 **pumps on top of the ground, a card reader there**
13 **that accepts only specific commercial professional**
14 **fueling cards.**

15 Q. What is that?
16 You said specific professional fueling
17 cards.

18 **A. In Pennsylvania it is illegal to sell**
19 **retail -- a retail customer gasoline/diesel fuel at**
20 **an unattended site.**

21 Q. You said in Pennsylvania it's illegal to
22 sell --

23 **A. Gasoline or diesel fuel to a retail**
24 **customer at an unattended site.**

25 Q. Okay. But these are unattended sites.

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1 **A. Correct. That's why we can't sell to --**
2 **that's why you can't pull up there with your Visa**
3 **card and buy gas.**

4 **So it's only commercial customers that**
5 **can go to the cardlock facilities and get fuel.**

6 **Q. So when the commercial customer goes to**
7 **the cardlock system, you said they have a card?**

8 **A. Mm-hmm.**

9 **Q. Could you tell me about the -- explain**
10 **the card?**

11 **A. It's a card that is issued by J.J.**
12 **Powell.**

13 **Q. Now, when you say -- well, what kind of**
14 **card is it?**

15 **A. It's a Pacific Pride card.**

16 **Q. Okay. So you have a Pacific Pride card.**
17 **What is Pacific Pride?**

18 **A. Pacific Pride is a cardlock fueling**
19 **network franchisor.**

20 **Q. You said it's a --**

21 **A. Cardlock fueling network franchisor.**
22 **You're getting an education today.**

23 **Q. You said cardlock fueling?**

24 **A. Cardlock fueling network franchisor.**

25 **Q. Network franchisor.**

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1 So what does that mean?

2 **A. That means that Pacific Pride is**
3 **the franchise -- I'm not going to say that, am I?**
4 **They're a franchisor of cardlock fueling networks.**

5 Q. So they own the network?

6 **A. Right.**

7 Q. It's a network of fueling cards?

8 **A. Of fueling cards and fueling sites.**

9 Q. What is the -- is there a difference
10 between a fueling card and a credit card?

11 **A. No. It's a mag stripe card. It looks**
12 **like a credit card, has a mag stripe on the back.**
13 **It's pretty typical.**

14 Q. So the J.J. -- what is the card that J.J.
15 Powell issues?

16 **A. Is a Pacific Pride card.**

17 Q. It will say on it --

18 **A. It will say Pacific Pride J.J. Powell.**

19 Q. So whose card is it actually? Is it
20 Pacific Pride's card or is it J.J. Powell's?

21 **A. It is actually J.J. Powell's card.**

22 Q. It's J.J. Powell's card?

23 **A. It is.**

24 Q. And is this a credit card?

25 **A. It is.**

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1 Q. It's a credit card?

2 A. We carry the -- J.J. Powell carries the
3 credit.

4 So if we issue the card to a commercial
5 customer, that customer goes and uses that card at
6 a site, we are holding the credit, carrying the
7 credit, until we bill them biweekly.

8 Q. They can only use the card -- well, where
9 can they use the card?

10 A. They can use the card at any Pacific
11 Pride site.

12 Q. So what does -- how does that work if
13 they go to -- so these are sites that J.J. Powell
14 doesn't own?

15 A. J.J. Powell owns all the sites that we're
16 looking at today as far as taxable/nontaxable
17 sales, but these customers can go to a different
18 state, to a different site that is not owned by
19 J.J. Powell and use that card.

20 Q. But for the nontaxable entities involved
21 in this lawsuit, you're saying that they all
22 involve sites owned by J.J. Powell?

23 A. Correct.

24 Q. So the -- if a customer comes to you,
25 they want the fuel card, they fill out an

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1 application, then what happens to it? Does Pacific
2 Pride have a role in --

3 **A. No. We process the application, issue**
4 **the cards, carry the credit.**

5 Pacific Pride only participates when they
6 are one of the transactions that we talked about
7 where a fueling customer from -- that we've issued
8 a card to --

9 **(Phone rings.)**

10 MS. SPRIGGS: Can we go off the record
11 for a moment, please?

12 **(Discussion was held off the record.)**

13 BY MS. SPRIGGS:

14 Q. And just we were off the record and we
15 mentioned -- we were talking about the Pacific
16 Pride card.

17 And you -- could a customer use that card
18 at, say, a Walmart?

19 **A. No.**

20 Q. So it's not a credit card in that sense?

21 **A. Correct.**

22 Q. Okay. When J.J. Powell is selling the
23 fuel to customers, where does J.J. Powell get its
24 fuel?

25 **A. We procure fuel from pipeline terminals.**

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1 Q. Okay. And how do you -- and you pay for
2 that?

3 A. Correct.

4 Q. And are you charged tax, excise tax, on
5 that, those purchases?

6 A. We are.

7 Q. And you pay that?

8 A. We do.

9 Q. Okay. And then how do you account for --
10 see -- or if you know, how does J.J. Powell account
11 for that tax when you pay for it on your books and
12 records?

13 A. So there's a general ledger account which
14 shows prepaid federal excise tax.

15 Q. So you have a general ledger and it's
16 prepaid excise?

17 A. Mm-hmm.

18 Q. And does that show up on your income
19 statement as an expense?

20 A. No.

21 Q. So it's not an operating expense?

22 A. No.

23 Q. What about your cost of goods sold? Is
24 it a cost of goods sold?

25 A. Yes, it would have to be.

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1 But I'm not the accountant, so maybe I
2 should say I don't know how we would account for
3 that.

4 Q. So you're not sure if it was an operating
5 expense?

6 A. I'm not positive.

7 Q. So are you sure about the general ledger
8 that it was treated as a prepaid excise tax?

9 A. Yeah.

10 (Powell Deposition Exhibit No. 2 was
11 marked for identification.)

12 BY MS. SPRIGGS:

13 Q. Are you familiar with this document?

14 A. I am.

15 Q. And could you explain what it is?

16 A. That is a list of tax exempt customers.

17 Q. Is this all of the tax exempt?

18 A. I can't be sure that it's all of them,
19 but it looks like a pretty thorough list.

20 Q. And it would include the customers who
21 purchased diesel and gasoline?

22 A. It would.

23 Q. And there are two columns. One says --
24 on this form it says Certificate on Hand For Audit
25 Period.

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1 Could you explain that column?

2 **A. No. I probably can, but I don't know**
3 **where this document came from.**

4 Q. Okay. You didn't prepare it?

5 **A. I did not prepare that, no.**

6 Q. Okay. It wasn't prepared at J.J. Powell?

7 **A. Not that I'm aware of.**

8 Q. Okay. So you wouldn't know some of
9 the -- for example, the Bellefonte School District,
10 there's no check where it says Certificate on Hand
11 For Audit Period.

12 So you wouldn't know anything about that,
13 or would you?

14 **A. I don't.**

15 Q. Okay. Going back to the fueling stations
16 and the customers who come to use their cardlock
17 card, could you explain for the tax exempt
18 customers how you set their price when they go to
19 the card to use their cardlock system?

20 Do you have something at the actual pump
21 that would determine their price?

22 **A. No.**

23 Q. Okay. So when they go to the pump, what
24 is happening? Is it just --

25 **A. They see the number of gallons they pump.**

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1 **They're mechanical pumps that do not**
2 **include pricing.**

3 Q. So nothing happens at the pump except --
4 for the cardlock system except you get the gallons
5 of gas?

6 **A. Correct.**

7 Q. So the pricing for the cardlock system is
8 all done at J.J. Powell?

9 **A. Correct.**

10 Q. Okay. So explain to me how that happens.
11 You get information from the cardlock
12 stations?

13 **A. We do. We pull that information every**
14 **night.**

15 **The price is determined prior to the sale**
16 **at J.J. Powell.**

17 Q. When you say "the price is determined
18 prior to the sale," what does that mean?

19 **A. Typically, we take a price survey on**
20 **Fridays, review the competitive prices.**

21 Q. So what is a price -- when you say "price
22 survey"?

23 **A. It's a list of competitors in the area**
24 **near the cardlock sites that includes their prices**
25 **for gas and diesel fuel.**

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1 Q. So how do you get those prices?

2 A. Competitors are typically truck stops,
3 other gas stations; so it's as simple as driving
4 around and looking.

5 Q. So you get the competitors' prices.

6 And then what?

7 A. Then we see what our costs are and we try
8 to be somewhere at or near the competitive prices.

9 Q. Now, this is for all of your customers or
10 just for taxable customers?

11 A. All customers. Well, as we look at the
12 competitive prices, those prices include tax.

13 Q. Okay. So you would look at these prices
14 and determine a price for your taxable customers?

15 A. Correct.

16 Q. Then for your nontaxable customers, what
17 would you do to determine the price?

18 A. We don't do anything. We just -- the
19 computer is set up to not charge those customers
20 taxes.

21 So we charge the same price for the fuel,
22 but the taxable customers also pay the amount of
23 the tax, where the nontaxable customers pay only
24 for the fuel.

25 Q. Okay. Walk me through that, because you

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1 just said you have a price for a taxable person, a
2 taxable customer.

3 **A. Yeah.**

4 Q. And that price you determine, use your
5 market survey, for the competitors in the area.

6 You came up with a price, and you said
7 that price was going to include tax?

8 **A. Correct.**

9 You want me to walk you through it from
10 there?

11 Q. Well, then I want to go to your
12 nontaxable, first, customer.

13 **A. Mm-hmm.**

14 Q. You're going to -- you said you compute
15 their price the, say, end of the month. You're
16 going to get all of their gallons of gas pumped
17 from a cardlock station.

18 Then you're going to, you said, use the
19 same price because you said you use the same price
20 that you've determined.

21 **A. Correct.**

22 We start out with -- let's assume that
23 the competitive price is \$3. So we know that we're
24 going to set our price at \$3 for taxable customers.

25 So for nontaxable customers let's assume

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1 that the taxes, the federal and state taxes, come
2 to 50 cents. So to get the price for the
3 nontaxable customers, it's \$3 minus 50 cents; so it
4 should be \$2.50.

5 Q. So that's the computation that J.J.
6 Powell would do at the end of the month?

7 A. No. We do it every day.

8 There's tax flags set up, and each
9 transaction knows if the customer is federal
10 taxable, state taxable or a combination of either
11 one; and it only applies the price -- the tax --
12 the price to the transaction if it's warranted.

13 Q. So a daily -- on a daily basis for
14 nontaxable customers, you have like a computer
15 program that is taking the gallons of gas,
16 multiplying it by --

17 A. By -- for the taxable customers, by the
18 price of the fuel plus the taxes.

19 Q. Well, that's just the competitive price.
20 You said --

21 A. But on a daily basis we take -- the
22 taxable customer gets a transaction. The
23 transaction gets pulled in from the site. It gets
24 priced at the price that we had determined earlier
25 that includes both fuel and taxes.

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1 For the nontaxable customer, when that
2 transaction comes in, ten gallons, it multiplies
3 that ten gallons by the price of fuel alone, and it
4 does not add the taxes. So it would be \$2.50
5 instead of \$3 for the taxable customer, because the
6 price of the fuel is really \$2.50. Right?

7 The taxes -- let's call it 50 cents --
8 brings it up to \$3. That's where the competitive
9 survey is taken. They include the taxes.

10 The nontaxable customer pays \$2.50
11 because we don't charge them the taxes.

12 Q. So the \$3 which you said was the
13 competitive price that you had determined, the
14 price of fuel was really \$2.50?

15 A. That's correct.

16 Q. And then you add --

17 A. Then you add the 50 cents for the tax.

18 Q. You add the 50 cents on to that
19 competitive price when you do the -- so your
20 program looks at the actual when you're computing
21 the price for the nontaxable --

22 A. It actually backs off the taxes.

23 We put the price in as \$3, and it backs
24 off the taxes.

25 Q. And then it will show the price of the

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1 fuel without any tax?

2 **A. Correct.**

3 Q. Okay. So the way that you have explained
4 the pricing of the fuel is a market based approach?

5 **A. Yes.**

6 Q. But I've seen some -- how does -- let me
7 rephrase.

8 When you are bidding for some of the tax
9 exempt government entities, do you bid sometimes on
10 a cost plus a profit margin basis?

11 **A. We do.**

12 Q. So can you explain the different pricing
13 models?

14 **A. In what sense?**

15 Q. Well, do you use -- do you only use the
16 cost -- when do you use this cost plus profit?

17 **A. When there is a bid typically that is a**
18 **contract bid for some period of years and the --**
19 **whether it's a school district -- I think in this**
20 **case we're talking about a school district -- or a**
21 **borough, they ask for a contractor a period of**
22 **years, and they specify how they want that product**
23 **to be priced; and typically they're asked for a**
24 **cost plus price.**

25 Q. So how do you determine the cost in that

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1 scenario when it's a cost plus?

2 **A.** Typically in those contracts, they will
3 ask to see some of our wholesale prices without tax
4 and they'll ask us to show them the price that we
5 pay for fuel at any point in time during the
6 contract just to make sure that we're using the
7 correct price. And they also ask that we -- well,
8 they don't ask. They demand that we do not charge
9 them taxes on those transactions.

10 Q. What costs go into making up the costs
11 that you would submit?

12 **A.** The cost of the fuel or the cost plus?

13 Q. Well, is it -- yeah. When you're looking
14 at the cost, is it just the cost of the fuel?

15 **A.** Right.

16 Q. It's just the cost of the fuel?

17 MR. VAN HOOK: Can we go off the record a
18 second?

19 MS. SPRIGGS: Sure.

20 (Discussion was held off the record.)

21 BY MR. VAN HOOK:

22 Q. We were discussing what costs go into
23 what you would submit in a bid to one of the
24 entities?

25 **A.** Yes. So it's the cost of the fuel only.

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1 On the invoice it would be the cost minus
2 the taxes. It is typical for a petroleum company
3 to look at the cost of fuel only without taxes to
4 determine pricing.

5 Q. And for the cost plus percentage profit,
6 so what does that percentage profit include?

7 A. That includes our operating costs plus
8 any profit that we hope to make.

9 Q. And what kind of operating costs would be
10 included?

11 A. Transportation, electricity, maintenance,
12 credit carrying costs, property taxes, utilities.

13 Q. Are you familiar with a document called a
14 product ranking report?

15 A. I am.

16 Q. Could you explain what that is?

17 A. That is a document that shows costs that
18 may or may not include taxes from our suppliers.

19 Q. And what do you use that document for?

20 A. To review pricing and also at times to
21 price the contracts for school district bids that
22 we just talked about.

23 Q. And how would you use it in that --

24 A. If that school district has requested a
25 cost plus contract pricing methodology, that

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1 **product ranking report would be used to determine**
2 **the cost of the fuel.**

3 Q. How would that -- how would the product
4 ranking report determine the cost for J.J. Powell?

5 You said you would use it for the bid.

6 So you would use that as J.J. Powell's
7 cost?

8 **A. Right. That's the cost from our**
9 **suppliers to us.**

10 Q. Oh, from your suppliers?

11 **A. Yeah.**

12 Q. And is there any difference when you're
13 setting the price for diesel fuel and gasoline? Do
14 you use the same methodology?

15 **A. The methodology is the same. The taxes**
16 **are different.**

17 Q. So it's just a matter of backing out a
18 different tax?

19 **A. Exactly right.**

20 Q. Or identifying a different tax?

21 **A. Right. Yeah.**

22 Q. Now, the customer that has the cardlock
23 system, that has the cardlock card, I just want to
24 make sure I understand.

25 They could not go to -- they have to go

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1 to a cardlock site?

2 **A. A Pacific Pride site, yes.**

3 Q. What happens if one of your exempt
4 customers -- so they can't go to a retail?

5 **A. No, they can't.**

6 Q. They cannot? Okay.

7 And how -- you said that when your tax
8 exempt customers go to the cardlock system, they're
9 flagged or there's a way that they're flagged for
10 taxes.

11 How are they identified?

12 **A. How are who -- when you say "they," who?**

13 Q. The tax exempt customers.

14 **A. Identified?**

15 Q. Yeah, how are they identified?

16 **A. The accounts of -- when the fuel cards
17 get set up, that account is identified as either a
18 taxable or nontaxable account.**

19 There are a number of different tax flags
20 set, including federal taxes and state taxes, and
21 there are yes/no flags that are set to determine
22 whether a customer should or should not be taxed.

23 Q. Going back to the Pacific Pride card and
24 Pacific Pride, does Pacific Pride have a
25 relationship with any of the other -- like any

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1 other credit card issuer?

2 A. When you say "credit card," do you also
3 mean a fueling network card, or do you mean a
4 credit card that can be used at a Walmart?

5 Q. Well, for example, there was a reference
6 to something called AmeriNet on one of the
7 applications for the J.J. Powell card.

8 A. Mm-hmm. Yes, they do have a -- there are
9 more -- at a Pacific Pride site, there's a Pacific
10 Pride card that can be accepted.

11 AmeriNet is another card that Pacific
12 Pride issues, and the AmeriNet card was designed
13 more for truck stop type of businesses, but the
14 AmeriNet card can also be used at a Pacific Pride
15 site.

16 We do not issue AmeriNet cards. We only
17 issue Pacific Pride cards.

18 Q. So your card has no relationship with
19 AmeriNet or -- there's another card -- any other
20 credit card?

21 A. Right.

22 Q. On the application for the J.J. Powell
23 card, there's a reference to purchasers and
24 guarantors.

25 Do you know who the guarantors are?

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1 A. I'm assuming that's in the credit
2 section, and a guarantor may be someone who is also
3 willing to pay for that fuel. I'm not sure without
4 seeing the document.

5 Q. Okay. The other card that I was going to
6 ask you about is Wright Express.

7 Is that related to Pacific Pride at all?

8 A. It may be related to Pacific Pride, but
9 we do not issue Wright Express cards and I don't
10 know what the relationship is between Wright
11 Express and Pac Pride.

12 Q. For your tax exempt customers, do they
13 all have a Pacific Pride card?

14 A. For the tax exempt customers that buy
15 fuel at Pacific Pride or you're talking about any
16 tax exempt customer?

17 Q. Well, I guess my question is: Do all the
18 tax exempts have to use the cardlock system and so
19 have to have a Pacific Pride card? Is that how you
20 handle all the tax exempt?

21 A. No. We also deliver some fuel out of a
22 truck to tax exempt customers.

23 Q. And is there a distinction between which
24 ones you deliver with a truck and --

25 A. There is in that -- only in that the ones

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1 that we deliver to in a truck may or may not also
2 have Pacific Pride cards.

3 But they typically would have their own
4 tank. Let's say -- I think Morris Township Road
5 District is a customer who we delivered nontaxable
6 fuel to during the periods in question, and they
7 have a tank at their facility that we go and fill
8 and they then fuel their own vehicles.

9 Q. And how does that work when you deliver
10 in a truck? How do you price that fuel?

11 A. That fuel gets priced at the cost minus
12 the taxes plus the operating expenses and profit
13 margin that we hope to obtain.

14 Q. Okay. You have to explain that.

15 So the price you said is going to be the
16 cost minus taxes plus -- so it's a cost plus?

17 A. It's -- we determine that -- we typically
18 determine that price every Friday. We set that
19 price based on the cost of the fuel without the
20 taxes included.

21 So again, if we're talking about that \$3
22 fuel at retail and the actual cost of the fuel is
23 \$2.50 without the tax, we start at the \$2.50 and
24 then add some number to get to the price that we're
25 going to charge that nontaxable customer.

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1 Q. You said you start with the cost and add
2 something?

3 A. We start with the cost of the fuel and
4 back out the tax that we've already paid.

5 Q. Okay.

6 A. So we prepaid that federal excise tax at
7 the rack, and now we add our operating expenses and
8 profit margin on to that number that does not
9 include the tax.

10 Q. And what is the -- you said the cost of
11 fuel.

12 That's going to be the cost from your
13 suppliers?

14 A. The cost from our suppliers.

15 Q. So that's the cost that you paid or J.J.
16 Powell paid, which included tax?

17 A. Which included tax.

18 Q. Then you're saying you back out the tax?

19 A. Once we back out the tax. We only back
20 out the tax once.

21 Q. Well, you said we start with cost of the
22 fuel, which I'm assuming would include tax.

23 A. Right. Then we back out that tax to get
24 to the net cost of just the fuel alone. Then we
25 add on the operating expenses, profit margin.

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1 Q. So what does that tax exempt customer,
2 what does their bill look like?

3 A. You mind if I look at a document here and
4 I can do a better job of explaining it?

5 Q. Okay.

6 A. (Looking on computer.)

7 A customer's invoice, for example, would
8 say, "Fuel meets federal and state requirements for
9 on highway motor vehicle use, 15 parts per million
10 sulfur and ultra low sulfur diesel, 96.8 gallons at
11 2.679."

12 Q. So I don't think I've seen an invoice
13 like this.

14 A. No, you haven't seen these. I pulled a
15 bunch of these yesterday just to show you.

16 This is a very small portion of the
17 nontaxable sales.

18 Q. So can I -- what I'll do is I'll just
19 take this information down, and then maybe if you
20 could provide a copy, so -- because I haven't seen
21 this before.

22 So this is the client is --

23 A. The client is Pleasant Gap Fire Company.

24 Q. And it is what date? Is there a date on
25 there?

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1 **A. Yeah, November 5th, 2010.**

2 Q. November 5th, 2010 invoice.

3 **A. You want the invoice number?**

4 **507034.**

5 Q. Invoice 507034.

6 So what we have is, this is on a
7 computer, a laptop, and this is an invoice for a
8 truck delivery from J.J. Powell to Pleasant Gap
9 Fire Company, and it's an invoice dated 11/5/2010
10 and it's Invoice Number 507034.

11 And we'll get a copy of this after the
12 deposition.

13 **A. Sure.**

14 Q. And this shows -- maybe you can walk us
15 through this again. It shows --

16 **A. It shows an invoice for on road, on**
17 **highway motor vehicle fuel that meets the 15 parts**
18 **per million sulfur standard, 96.8 gallons at a**
19 **price of \$2.679, for a total of \$259.33.**

20 Q. So the tax exempt only sees -- they see
21 the gallons and then they see a price.

22 So they don't see the behind -- how you
23 developed that price?

24 **A. Right.**

25 Q. Now, for the fuel that's being purchased

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1 here, which is?

2 **A. Diesel fuel.**

3 **Q. Is diesel fuel.**

4 So that \$2.69 price, if you have another
5 tax exempt who is purchasing it using a fuel lock
6 card, are they going to get that same price?

7 **A. No.**

8 **Q. Could you explain the difference?**

9 **A. There are different costs associated with**
10 **the delivery of fuel as opposed to the cardlock**
11 **delivery of fuel.**

12 **There are different market variances also**
13 **because we're competing with a different, totally**
14 **different, segment of the market in delivering**
15 **small truckloads of fuel as opposed to the**
16 **cardlock's competitors are typically truck stops,**
17 **gas stations, that kind of thing.**

18 **Q. So is the price -- do they pay a premium**
19 **for getting the delivery or how does it -- or can**
20 **you say?**

21 **A. It can go -- it can be either way. There**
22 **can be times when our profit margin on the delivery**
23 **of fuel is better, and there are times when the**
24 **delivery through a cardlock is better.**

25 **And why that is or isn't, I can't really**

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1 **explain.**

2 Q. So we're looking at the total price here
3 on the invoice for Pleasant Gap Fire Company, the
4 2.69.

5 If we were just looking at the actual --
6 when I say the actual price, if we were not looking
7 at -- you said you added on the operating expenses
8 and profit margin.

9 So if you were to go back and we just
10 looked at the cost of that fuel minus the taxes,
11 then would the price for the fuel for the cardlock
12 customer, tax exempt customer, and the delivery
13 customer be the same?

14 **A. Yes.**

15 Q. Okay. You said you pulled up some other
16 invoices today.

17 What other kinds of invoices were you
18 able to pull up?

19 **A. More tax exempt transactions. I wish I**
20 **would have brought some taxable transactions too**
21 **now. But just other tax exempt transactions for**
22 **the fourth quarter of 2010.**

23 So when Bob gets to the 8849, there
24 should be significant coverage of what he has.

25 Q. Okay. Did you get involved at all with

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1 the -- with maintaining the exempt certificates
2 that the tax exempt entities provided to J.J.
3 Powell?

4 **A. I know of the maintaining them. I wasn't**
5 **physically involved in the process.**

6 Q. Who was involved in that process?

7 **A. At that time Angie Cuthburt was.**

8 Q. And what was her job?

9 **A. She was the fuel truck dispatcher.**

10 Q. So to your knowledge was there any
11 procedure for following -- sort of reviewing the
12 exempt certificates?

13 **A. There was.**

14 Q. What was the procedure?

15 **A. To review the exemption certificates on**
16 **an annual basis and get the updated certificates**
17 **that we needed.**

18 Q. And when did this procedure start?

19 **A. I don't know that.**

20 Q. And who was -- was Angie Cuthburt the
21 person who was in charge of this procedure?

22 **A. It was -- she was.**

23 Q. And was there anyone who reviewed what
24 she did?

25 **A. No.**

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1 Q. Okay. Did you have an outside -- did
2 J.J. Powell have an outside accountant?

3 A. No.

4 Q. So all of your accounting was internal?

5 A. Yes.

6 Q. So who was in charge of the internal
7 accounting?

8 A. Doug Goss was our comptroller.

9 Q. Do you know if he got involved at all
10 with reviewing the exempt certificates?

11 A. Not that I'm aware of.

12 Q. So to your knowledge were any -- were
13 there any accountants that were asked opinions
14 about the exempt certificates and whether they were
15 valid?

16 A. No.

17 Q. Were there any discussions at J.J. Powell
18 about the exempt certificates for the entities and
19 whether they were valid?

20 A. No.

21 Q. At J.J. Powell were you aware that the
22 exempt certificates were -- there were requirements
23 for maintaining the exempt certificates?

24 A. We were.

25 Q. But there was no -- so you said there was

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1 an annual review of the certificates?

2 **A. Right.**

3 Q. And then what was done at the annual
4 review?

5 **A. We would review the certificates. And if**
6 **they were going to expire during the year, then we**
7 **would get an updated certificate.**

8 Q. Okay. Now, when a client -- when you had
9 a tax exempt customer and you -- they wanted to use
10 your fuel lock system, how did you coordinate the
11 exempt certificate and the fuel lock card?

12 **A. So if that exempt customer applied for**
13 **fuel cards, we would immediately send them the**
14 **exemption certificates required or they would --**
15 **oftentimes they would just include them because**
16 **that's typical standard. And so prior to issuing**
17 **the cards we would have a certificate on file.**

18 Q. And did someone verify that that was
19 actually the case, that there was a certificate on
20 file before they gave them a fuel card?

21 **A. As far as I know, yeah.**

22 Q. Were there instances where tax exempts
23 were using fuel cards, J.J. Powell's fuel cards,
24 and they did not have a valid certificate on file?

25 **A. No.**

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1 Q. Did the exempt certificates that were
2 provided to J.J. Powell, did they indicate what
3 kind of fuel the tax exempt was purchasing?

4 A. I don't know that.

5 Q. Are you aware that many of the exempt
6 certificates that were submitted in this case for
7 the tax exempts purchased fuel from J.J. Powell,
8 many of them were signed by the tax exempt entity
9 after the beginning of the contract?

10 A. There were lots -- yeah, there were lots
11 of contracts that continued on and on, and those
12 exemption certificates, as long as they were within
13 three years, one could start -- there could be an
14 exemption certificate that existed prior to the
15 beginning of the contract; and as we went through
16 the contract, there would be another one to take
17 that one's place.

18 Q. Would you keep them together, because
19 what I have are just like the single page -- well,
20 I have a beginning date, an end date and then a
21 signature somewhere in the middle but nothing
22 behind it to show the history?

23 A. We should -- I assume we have them. I
24 don't know for sure --

25 Q. Okay.

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1 **A. -- if we keep the old certificates.**

2 Q. You said that when you did the -- when
3 you had the annual review of the certificates, I
4 think you mentioned something about if the
5 certificates are getting ready to expire you ask
6 for new -- when you say "expire," what do you mean?

7 **A. The certificates are good for three**
8 **years. So if that certificate is going to expire**
9 **in the current calendar year, then we ask for a new**
10 **certificate.**

11 Q. Why do you think that they expire in
12 three years? Where does --

13 **A. There's a Treasury Code, I think, that**
14 **says that.**

15 Q. And was there -- since earlier you said
16 you didn't talk to an accountant about this, who
17 would have advised you of this?

18 **A. The Pennsylvania Petroleum Association.**
19 **And I think also from -- just from experience, we**
20 **had used those certificates and been audited many**
21 **times before.**

22 Q. So you said the Pennsylvania Petroleum
23 Association provided you --

24 **A. No, they didn't provide us with**
25 **certificates.**

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1 Q. No, with information.

2 A. The Pennsylvania Petroleum Association
3 does provide us with information on a regular
4 basis, with newsletters and that kind of thing,
5 yeah, that specifically talk about tax
6 requirements, nontaxable requirements, that kind of
7 thing.

8 Q. But the three-year requirement, that's
9 J.J. Powell's -- that was J.J. Powell's -- that was
10 part of their review process? They would be using
11 the three years as some sort of expiration date?

12 A. Yeah. And I think it even said that on
13 the certificate.

14 Q. Okay. So if three years was not the
15 correct date, then what would that mean for the
16 certificates that you have?

17 A. That would mean that they're not good.

18 Q. Okay. And there was never -- was there
19 any discussion at J.J. Powell about whether three
20 years was the correct --

21 A. No.

22 Q. -- time period for the certificates?

23 MS. SPRIGGS: Let's go off the record.

24 (Recess taken from 10:48 a.m. to 10:59
25 a.m.)

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1 (Powell Deposition Exhibit No. 3 was
2 marked for identification.)

3 BY MS. SPRIGGS:

4 Q. This is a document dated August 29th,
5 2014, and it's Plaintiff's response to some
6 informal discovery requests by the government.

7 Take a look at that document.

8 MR. VAN HOOK: He's looking at the
9 letter. He's not looking at the response.

10 MS. SPRIGGS: Oh, okay.

11 BY MS. SPRIGGS:

12 Q. Well, let me rephrase. Exhibit 3 then
13 will be the letter to Plaintiff's Counsel.

14 The main thing I wanted you to look at
15 actually are the documents that are attached to the
16 letter. And there are a series of exhibits.

17 Could you take a look at those exhibits?

18 **A. Sure. (Complying.) Mm-hmm.**

19 **What can I tell you about them?**

20 Q. So are you familiar with the documents?

21 **A. Yeah.**

22 Q. I only have one copy, so I have to -- so
23 Exhibit 1, could you just explain what that is?

24 **A. This is September 2009 exempt gas sales**
25 **through cardlock. Bob Hummel had prepared this.**

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1 And these are the exact gallons that have
2 been sold through our cardlock facilities.

3 Q. So when we were talking about the
4 computation J.J. Powell would do for the cardlock
5 system, is this a part of it, part of that kind of
6 computation for the price?

7 A. No.

8 Q. Okay. This is just the gallons?

9 A. This is just the gallons used to help
10 prepare the 8849 and the state returns.

11 Q. Okay. And so when it says Schedule 10
12 there and there's some check marks, what does that
13 mean?

14 A. I'll have to let Bob Hummel answer that
15 specifically, what Schedule 9 and Schedule 10 are.

16 Q. And who would have prepared this?

17 A. Bob Hummel.

18 Q. And attached is Exhibit 2?

19 A. Mm-hmm.

20 Q. Could you explain what that document is?

21 A. Be happy to.

22 This is the most raw form of the
23 transactions. This is just after the transactions
24 have been pulled on a daily basis and they have
25 come into the computer where they all get priced

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1 and prepared to be sent out on the invoice to all
2 of our customers.

3 And this shows the tax exempt flags that
4 we have discussed before, the selling price, the
5 approximate cost of the fuel. It includes the
6 date, the time, the customer, the product based on
7 these product codes. 25 matches off road diesel
8 fuel. 45 would be an on road diesel fuel product.

9 And you can see the -- there's a
10 nontaxable and a taxable sale there together, the
11 45, with the price difference being -- what's that
12 come to -- 62 and a half cents, which is the amount
13 of the difference in the amount of the tax.

14 Q. Could we go through that?

15 A. Yeah.

16 Q. You're looking at -- on Exhibit 2, you're
17 looking at -- what is it?

18 A. That's the Centre County Transportation
19 Authority, I believe, is the official name of that,
20 but it's Centre County Office of Transportation.

21 Q. And they purchase what product?

22 A. They purchase Product 45. Here. This is
23 not easy to read, but Product 45, which is on road
24 diesel fuel, ultra low sulfur diesel fuel.

25 And Robinson Septic also purchased on

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1 road diesel fuel.

2 Q. And Robinson, is that the taxable --

3 A. They are taxable, yes. And the tax flags
4 over here correspond with our tax flags. There are
5 six tax flags and diesel fuel. Federal excise is
6 first, state excise, state excise, county, city and
7 state sales tax.

8 Q. So the Y's mean --

9 A. So the Y's mean yes.

10 Q. -- yes, they are taxable?

11 A. Yes, they are taxable.

12 So there's actually two yeses on this
13 Centre County. But they're the county and city,
14 and those tax rates are zero; so it doesn't mean
15 anything.

16 And on Robinson Septic, they have yeses
17 for all of them except sales tax, and diesel fuel
18 is not sales taxable in Pennsylvania.

19 Q. Okay.

20 A. And so the total of these applicable
21 taxes are 62.5 cents, and that's the difference in
22 price between Centre County and Robinson, the 2.859
23 minus 2.235.

24 Q. So the unit -- the unit price is showing
25 the unit price that they would pay?

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1 A. Yeah. And on -- we had supplied you with
2 some customer invoices so we could go back and look
3 at Centre County Transportation Authority.

4 When they get their invoice, we could
5 look at that specific day, time and location and
6 see that that transaction, September 1st, 2009,
7 would be right there. (Looking on computer.)

8 I don't have Centre County Transportation
9 Authority. That's perfect. Let me find another
10 one here. I would be happy to show you that.

11 Q. I think I understand.

12 MR. VAN HOOK: We'll just look at one
13 that's --

14 THE WITNESS: Can I just -- so their
15 invoice, when they get an invoice every two weeks,
16 it looks like this. (Indicating.)

17 So this is for Bellefonte Borough and it
18 shows each one of these transactions, but it breaks
19 them out by each card. That would be the card
20 number that's listed right there, and now it will
21 show which site that card was used at, the time,
22 the date, the odometer, miles per gallon, product,
23 no tax on the price 2.234 on that day, 1/4/2010.

24 BY MS. SPRIGGS:

25 Q. So you are looking at an individual --

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1 **A. Yes.**

2 Q. Let me just jot this down.

3 So this is an individual invoice for?

4 **A. Bellefonte Borough. I think we had**
5 **supplied these to you.**

6 Q. Bellefonte Borough?

7 **A. Mm-hmm.**

8 Q. And it's for June 3?

9 **A. This is for --**

10 Q. 1/31/10?

11 **A. 1/31/10. Invoice 010456- -- I'm sorry --**
12 **1003101.**

13 Q. Okay. If you could look at Exhibit 2 to
14 this attached to the letter of August -- what is
15 that? August 1st, 2014?

16 **A. August 1st, 2014.**

17 Q. And could you explain what that document
18 is?

19 **A. That is the edit print transactions.**

20 Each night the computer system calls --
21 our fueling, cardlock fueling, computer calls out
22 to the unattended sites and pulls in the
23 transactions to the main cardlock fueling computer,
24 and it gathers all the transactions, prices them
25 and distributes them to the accounts that they

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1 **belong to.**

2 **It shows the customer, the driver, the**
3 **vehicle, the transaction date, the time, the**
4 **product, unit cost, the unit price, tax flags,**
5 **quantity, total of the sale and each site there**
6 **where the fuel had been purchased.**

7 Q. Can I take a look?

8 **A. Sure.**

9 Q. (Reviewing document.)

10 For something like U.S. Fish, which is on
11 Exhibit 2, is that a federal -- is that a tax
12 exempt?

13 **A. It is a tax exempt sale. The flag's**
14 **there.**

15 Q. So it says no.

16 So that means no tax?

17 **A. No tax.**

18 Q. But there's yes to something?

19 **A. There's yes to city and local tax, but**
20 **those tax rates are zero; so in effect there's no**
21 **tax applied.**

22 Q. So their -- U.S. Fish and I guess
23 Wildlife is purchasing what?

24 **A. They are purchasing Product 25, which is**
25 **off road diesel fuel, which is nontaxable. It's a**

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1 nontaxable product, so there's nothing being taxed
2 on no matter what.

3 Q. Okay. Down here it shows Powell, Inc.?

4 A. Yeah. That's -- we're buying our own --
5 our trucks fuel there too.

6 So when our trucks go there and fuel, we
7 don't charge ourselves for our fuel.

8 Q. Okay. Well, what is this price you have
9 a price here.

10 A. That's an estimated cost of that product,
11 but we don't charge ourselves.

12 Q. Okay. And Powell, Inc. is?

13 A. J.J. Powell, Inc.

14 Q. Oh, it's J.J. Powell?

15 A. Yeah.

16 Q. Up here it says buying host.

17 A. Mm-hmm.

18 Q. What does that mean?

19 A. That's those transactions where, let's
20 say, Christoff Mitchell is another Pacific Pride
21 franchisee. They may have issued a card to a
22 customer who then used it at our site that day, and
23 so that would be their customer.

24 That's just -- it shows what other
25 company's customers have purchased fuel at our

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1 **site.**

2 Q. Okay. Now, this Beavertown, so that's
3 not -- that's taxed?

4 A. **That is taxable.**

5 Q. That is taxable?

6 A. **Yes. And the last flag is a no for PA**
7 **sales tax, and fuel is not PA sales taxable.**

8 Q. And Exhibit 5.

9 A. **This is another report that's produced by**
10 **Bob Hummel in preparation of his 8849s. That's**
11 **exempt diesel sales through the cardlock, and it's**
12 **a list of the exempt entities and the number of**
13 **gallons that they purchased.**

14 And again, I don't know exactly what
15 **Schedule 9 and Schedule 10 are.**

16 Q. Okay. And Exhibit 6 says Customer
17 Federal Excise Report.

18 A. **Yes. This is also a report that Bob uses**
19 **in preparation for the 8849.**

20 He runs a report both for gas and diesel,
21 and these are cardlock transactions and on -- in
22 the sums, the number of gallons they've purchased
23 for the period specified in the report -- in this
24 instance it happens to be August of 2009, and it
25 shows a Patton Township -- I'm sorry -- Alpha Fire

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1 Department located in Patton Township that had
2 purchased Product 45 on road diesel fuel. They
3 purchased 119.55 gallons, multiplied by the federal
4 excise tax rate of 24.3.

5 That shows that there's \$29.05 that Bob
6 will eventually apply for a refund on the 88.49.

7 Q. How does that relate to the -- can I see
8 that for a second? So you have a quantity --

9 (Phone rings.)

10 MS. SPRIGGS: We'll go off the record for
11 a moment.

12 (Discussion was held off the record.)

13 THE WITNESS: So the 119.55 is the number
14 of gallons that that exempt customer purchased for
15 that month, and Bob then sums all these over here
16 on his report for the exempt diesel sales through
17 the cardlock.

18 BY MS. SPRIGGS:

19 Q. Oh, okay. So quantity. And this -- the
20 2905?

21 A. Is just the 119 multiplied by the federal
22 excise tax rate.

23 MR. VAN HOOK: Which you've already paid
24 and you're going to get back again. I'm sorry.

25 BY MS. SPRIGGS:

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1 Q. But the fire department, they were
2 charged -- how does this -- so you're saying that
3 the fire department was not charged this tax?

4 A. Right.

5 Q. So you're just multiplying that amount by
6 the gallons?

7 A. Yes, exactly.

8 Q. Exhibit 7, I'm not sure. I think I had
9 asked about this, the top, because there's no
10 identifier on that one.

11 THE WITNESS: Is that exempt federal or
12 exempt --

13 BY MS. SPRIGGS:

14 Q. If you don't know, we will --

15 A. I'm going to suggest asking Bob because
16 he will.

17 Q. Exhibit 8, I think I had asked you about
18 this earlier. I guess this is the product ranking
19 report.

20 A. It is. It's a product ranking report.

21 At least daily we get price changes from
22 suppliers. Bob Hummel also produces this report,
23 and it just shows the cost without tax. So this is
24 backing out the tax, cost minus the tax, from all
25 of our suppliers for a number of different products

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1 that we can purchase.

2 So a 500 part per million low sulfur
3 nontaxable off road in locomotive fuel of 15 parts
4 per million, ultra low sulfur diesel nontaxable
5 fuel, just keep -- 15 parts per million ultra low
6 sulfur diesel, which would be a taxable fuel. But
7 again, this is product cost without any taxes
8 included in this report, and it's just for our
9 reference to see what we're paying to be able to
10 determine the pricing for both nontaxable and
11 taxable customers based on the product cost.

12 And then for the taxable customers, we
13 would add the tax in. For the nontaxable, we would
14 not add tax.

15 Q. Okay. And Exhibit 9, are you familiar
16 with this?

17 It says third quarter, 2009 federal
18 exempt diesel.

19 A. Yep. This is another report that Bob
20 Hummel produces, and he used that in preparation
21 for his 8849.

22 It includes the fuel management or the
23 cardlock sales, and it lists each individual entity
24 that had exempt sales and the number of gallons
25 that they purchased by month. And it also shows

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1 these delivered gallons that were delivered off a
2 truck to the locations owned by the exempt
3 entities.

4 Q. So the fuel management?

5 A. Means the same as cardlock.

6 So these will match up to the report, the
7 other two reports that are in here, both -- so
8 this -- so they would match up to this report and
9 also to the 119.55, which was the fire department.
10 which fire department was that? Alpha Fire
11 Department.

12 The 119.55 for August matches up to
13 119.55 for August for Alpha Fire Department.

14 Q. Okay. If you could mark this as Exhibit
15 4.

16 (Powell Deposition Exhibit No. 4 was
17 marked for identification.)

18 BY MS. SPRIGGS:

19 Q. And this is the motor fuel price survey.
20 And are you familiar with this?
21 Well, it's a part of it, a page of it.

22 A. I am familiar with this.

23 Q. Could you explain what that is?

24 A. This is a price survey that we typically
25 take on a weekly basis that helps us determine the

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1 prices that we would like to set for the cardlock
2 transactions.

3 Q. And why did you -- is it just for
4 cardlock?

5 A. We do only use this for cardlock.

6 Q. And why?

7 A. Because it's a survey of other
8 competitors to the cardlock fueling system.

9 It's got truck stops and other places
10 that typically sell diesel fuel and gasoline to --
11 in a method that is similar to the cardlock.

12 So people are coming and putting the gas
13 in their vehicle at all these locations.

14 Q. So it gives the name of the entity and
15 then it shows -- for example, it says Snappy's
16 State College.

17 But isn't that J.J. Powell?

18 A. It is. But Snappy's is -- I guess could
19 also be considered a competitor of a cardlock site
20 because there are some commercial customers that
21 might have a Wright Express card that you mentioned
22 before that is a competitor to the Pacific Pride
23 facility, and that Wright Express card can be used
24 at a retail location, a Snappy's or a gas station,
25 that kind of thing.

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1 So these are all places that compete with
2 the cardlock facilities, and so we take the survey
3 and try to set our price accordingly.

4 Q. So you have handwritten -- these are
5 prices that you determine just from going around?

6 A. Mm-hmm.

7 Q. And then you have something that says our
8 price. You have a price column and you have our
9 price.

10 A. And price change too.

11 So each week we -- Cathy Herman, a girl
12 in our office, fills out the price of the
13 competitors. She writes in what our prices are at
14 our nearest card locks, and then my brother
15 typically changes -- what we're going to change our
16 price to, he writes in this last column to reset
17 our price for the week going forward.

18 Q. And so what is the process for changing
19 the price?

20 A. Just comparing our price to the
21 competitors, and we also look at which way fuel
22 price is changing. Do we expect it to go up? Do
23 we expect it to go down? And just kind of make an
24 educated guess as to what's the best thing to do
25 for the following week.

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1 Q. So that's a price per gallon that you
2 have when you go around to the --

3 A. Right.

4 Q. Okay. So --

5 A. And these prices all include taxes.

6 Q. Yeah.

7 A. And then if it's a tax exempt, that's
8 when they have the nos on there, then the computer
9 backs out those taxes, the 62 and a half cents or
10 the 52 cents on gasoline.

11 So a tax exempt customer buying in
12 cardlock isn't going to pay 2.99 for diesel.
13 They're going to pay 62 and a half cents less.

14 Q. Okay. So you have two -- you explained
15 two different methodologies for pricing today
16 because you mentioned the -- you use the market
17 survey. That's one?

18 A. Which is this. (Indicating.) Right? Or
19 no?

20 Q. Well, I thought you were talking about
21 the product ranking.

22 A. Oh, the product ranking report. Yeah.
23 Okay.

24 Q. Is that a different?

25 A. Yeah. The product ranking report

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1 shows -- we use that more for the fuel that we
2 deliver with trucks.

3 Q. Okay.

4 A. This is what we use to price the -- this
5 motor fuel price survey is what we use to price the
6 cardlock sites.

7 The fuel that we deliver off the truck is
8 more based off the cost of the fuel, but those
9 prices that competitors charged are not published
10 for deliveries from a truck; so it's a little more
11 standard, probably a little bit more of a standard
12 procedure, where it's typically cost plus and add
13 on.

14 Q. Okay.

15 (Powell Deposition Exhibit No. 5 was
16 marked for identification.)

17 BY MS. SPRIGGS:

18 Q. And are you familiar with this document?

19 A. I am.

20 Q. We talked about it earlier, that it is
21 the application for the fuel lock card.

22 Is that what this is?

23 A. That is correct.

24 Q. And the question I had asked, if you look
25 at Paragraph Number 11, it talks about guarantors.

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1 And I didn't know if that would jog your
2 memory or if there's some specific category of
3 individual that is always a guarantor or --

4 **A. No. I think purchaser and guarantor in**
5 **that instance are the same.**

6 Q. Okay. And it says -- so the terms of
7 cardlock use, and it says down at the bottom --
8 let's see -- "I have made the above statements for
9 the purpose of obtaining credit."

10 So the credit they're talking about is?

11 **A. Is that the money that is owed by the**
12 **purchaser to J.J. Powell, Incorporated, because**
13 **they will be billed every two weeks.**

14 So they buy their fuel for two weeks, and
15 they don't get an invoice until after the two weeks
16 are over. So they're going to owe us some amount
17 of money.

18 Q. Okay.

19 (Discussion was held off the record.)

20 (Recess taken from 1130 a.m. to 11:42
21 a.m.)

22 MS. SPRIGGS:

23 (Powell Deposition Exhibit No. 6 was
24 marked for identification.)

25 BY MS. SPRIGGS:

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1 Q. Are you familiar with this document?

2 It's called letter of registration.

3 A. Yes.

4 Q. And could you explain what it is?

5 A. I can read what it is. It's an
6 application for registration for certain excise tax
7 transactions has been approved pursuant to the IRC
8 Code 4101, and it shows our UV number.

9 Q. Okay. Were you involved in the request
10 for -- or involved with the application for the
11 registration?

12 A. No.

13 Q. Okay. Did you get involved at all with
14 keeping up with the status of the registration?

15 A. No.

16 Q. And do you know what the registration was
17 for?

18 A. For tax exempt sales.

19 Q. Okay. In what way?

20 A. In -- for selling the fuel to tax exempt
21 entities.

22 Q. Okay. Who would this letter have come
23 to?

24 A. It would have -- likely -- in 1994, I
25 don't know.

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1 Q. Okay. Would you have reviewed it?

2 A. No.

3 Q. You say in 1994 you don't know.

4 Do you know now who it would go to?

5 A. It would likely wind up with Bob Hummel.

6 Q. Because on the second page of this
7 document it's dated September 7th, 2011.

8 So do you know who would have received
9 that letter?

10 A. I would assume Bob Hummel.

11 Q. Okay. Now, going back to the first page
12 of this document, it gives -- it says your
13 registration number. It gives your registration
14 number. That's for J.J. Powell.

15 It says, "Your company is registered as
16 an ultimate vendor of diesel fuel."

17 Do you know what that -- do you know what
18 that means?

19 A. I don't know.

20 Q. Okay. It says, "This allows your company
21 to claim a credit or refund of the federal excise
22 tax on your sale of undyed diesel fuel."

23 What is undyed diesel fuel?

24 A. At that time that would have been fuel
25 that was meant for a nontaxable use -- I'm sorry --

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1 **for a taxable use.**

2 Undyed would have been taxable at that
3 **point. Dyed would have been nontaxable.**

4 Q. Okay. Is there an indicator when you
5 sell diesel fuel that lets you know whether it's
6 undyed or not?

7 **A. On an invoice you mean or --**

8 Q. Well, for example, if you -- this
9 registration says you can claim a refund of federal
10 excise tax on the sale of this particular diesel
11 fuel.

12 **A. Mm-hmm.**

13 Q. So when you go -- when J.J. Powell
14 applies for a credit or refund, does it have
15 documentation that shows that it was undyed diesel
16 fuel that they're claiming?

17 **A. Yes. Yes.**

18 Q. And what would that be?

19 **A. That would be the description of the**
20 **product.**

21 Q. And that would be on?

22 **A. On invoices.**

23 Q. It would be on the invoice to the tax
24 exempt?

25 **A. To the tax exempt customer, yes.**

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1 Q. Okay. And now, the next paragraph says,
2 "A certificate from a farmer or a state or local
3 government must be obtained and must be renewed
4 every 12 months."

5 Are you familiar with that protocol?

6 **A. No, I was not.**

7 Q. That was 1994.

8 So from 1994 no one ever discussed that
9 the certificates must be renewed every 12 months?

10 **A. No, and we have been through many, many**
11 **audits since 1994.**

12 Q. Okay. Did J.J. Powell file any excise
13 tax returns? Do you know?

14 **A. We -- at one time I know we did before**
15 **the excise taxes were moved to the rack. I think**
16 **at one time the excise taxes we submitted.**

17 Q. When was that?

18 **A. I don't remember.**

19 Q. Do you remember what returns you filed,
20 J.J. Powell filed?

21 **A. No, I don't.**

22 Q. But currently for the periods in issue in
23 this suit, there were no like Form 720s filed or
24 any excise tax returns filed?

25 **A. No. No.**

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1 Q. So the second page of this exhibit says,
2 notification of change in registration.

3 Do you know why there was a change in
4 registration?

5 A. No, I do not.

6 Q. Because it says -- it just says something
7 about, "Your previous registration number" -- gives
8 the same number on the first page -- "was issued to
9 conduct tax free transactions." It says, "Is no
10 longer valid and has been reissued due to a change
11 in the Internal Revenue Service numbering system."

12 Do you know what that means?

13 A. Only that the Internal Revenue Service
14 must have changed their numbering system.

15 Q. And are you aware of any time when the
16 registration was suspended for any reason?

17 A. No.

18 Q. I think have an invoice from an entity
19 you talked about earlier. Just want to show you
20 parts of this. I want to take the first and last.

21 (Powell Deposition Exhibit No. 7 was
22 marked for identification.)

23 BY MS. SPRIGGS:

24 Q. And are you familiar with this document?

25 A. I am.

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1 Q. And could you explain what it is?

2 A. This is an invoice for cardlock purchases
3 made by Bellefonte Borough for the period ending
4 July 31, 2009.

5 Q. And so it shows different -- on the first
6 page, is it showing --

7 A. The first page it shows each card number,
8 the name that the Bellefonte Borough has assigned
9 to that card, where the purchases were made, the
10 date, the time, the product, the unit measure,
11 taxable or nontaxable status, quantity, and the
12 price and the extended amount.

13 Q. So the price -- this is for -- so the
14 first --

15 A. The first transaction is no lead, which
16 is unleaded regular gasoline. The price is 2.094.

17 Q. And then what is the amount?

18 A. The amount is 37.69.

19 Q. No. I'm saying in the column.

20 Are we looking at the same --

21 A. (Reviewing document.)

22 Q. We're looking at the same -- let me
23 get -- you're at 3855.

24 So the amount, the 37.69, what is that?

25 A. That is the quantity multiplied by the

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1 price.

2 Q. So that's the amount that they would owe?

3 A. Owe, yes.

4 Q. Okay. So then on the last page, what
5 is --

6 A. I can explain that.

7 Q. Okay. It's --

8 A. The prompt pay volume discount?

9 Q. Yeah.

10 A. Okay. So we gave our customers who
11 purchase more volume during the course of the
12 billing period to take a discount on their fuel
13 purchases, so a customer who purchases between 100
14 and 299 gallons during the two-week period or
15 whatever the billing period may be, to take two
16 cents per gallon off this invoice if they pay by
17 September 9th -- I'm sorry -- September 11th of
18 2009.

19 So the more gallons a customer uses, the
20 greater the discount that we give them the
21 opportunity to take if they pay within ten days.

22 Q. Okay. But it's not related at all to --

23 A. Not at all, to taxes.

24 Q. -- to taxes?

25 A. (Indicating negatively.)

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1 (Powell Deposition Exhibit No. 8 was
2 **marked for identification.)**

3 BY MS. SPRIGGS:

4 Q. And this is an invoice for -- is it
5 Lezzer Lumber?

6 A. **Lezzer Lumber.**

7 Q. And are you familiar with this document?

8 A. **I am.**

9 Q. And could you explain what it is?

10 A. **This is an invoice for Lezzer Lumber for**
11 **the period ending July 31st, 2009, and it shows**
12 **similar information to the invoice we just**
13 **reviewed, except on the second page it shows all**
14 **tax rather than no tax.**

15 Q. On the second page?

16 A. **Second page, all tax.**

17 Q. So if you look under the opening
18 odometer --

19 A. **Yep. It shows the product they**
20 **purchased, the gallons, all tax, the quantity and**
21 **the price of the fuel.**

22 Q. So that means -- what does that mean?

23 A. **The price of the fuel?**

24 Q. No. The all tax.

25 A. **All tax? That means that they are set up**

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1 on a description of all tax in these tax flags that
2 we set up where this would be for a taxable
3 customer, and the no tax is set up for a
4 nontaxable -- an exempt customer.

5 Q. So you're looking at --

6 A. At a setup screen on the cardlock fueling
7 network computer where we assign descriptions and
8 set the yes/no tax flags based on the product,
9 which is diesel, and the state, Pennsylvania, and
10 all the different taxes, the borough, federal
11 excise, state excise, city, county and the sales
12 tax.

13 So when someone is taxable, that
14 description is all tax, and someone who is
15 nontaxable, that description shows up on the
16 invoice as no tax.

17 Q. Okay. Could you -- I may have that -- I
18 want to put that as an exhibit. I may have a copy
19 of it.

20 A. If not, you're welcome to have this one.

21 Q. We'll just label this Exhibit 9.

22 (Powell Deposition Exhibit No. 9 was
23 marked for identification.)

24 BY MS. SPRIGGS:

25 Q. Well, we'll just keep that so we'll know

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1 that that's what you were referring to.

2 So when the price is computed then for
3 the Lezzer Lumber, then for example on the second
4 page, the 2.879 which says all tax is a quantity of
5 62.14 gallons.

6 **A. Correct.**

7 Q. So that price would include tax?

8 **A. Federal excise, state, two state taxes,**
9 **yes, which on the diesel fuel come to 62.4 or 5**
10 **cents.**

11 Q. So if we go back to compare to the tax
12 exempt, the Bellefonte Borough --

13 **A. Mm-hmm.**

14 Q. -- where the taxable customer, it says
15 all tax on the invoice, then for the nontaxable it
16 says no tax?

17 **A. Correct.**

18 Q. And that's standard.

19 So that's the standard procedure?

20 **A. Yep, that is the -- and that comes right**
21 **off these tax flags that are set up where it says**
22 **all tax, and for the tax exempt customers, it says**
23 **no tax.**

24 Q. Okay.

25 (Powell Deposition Exhibit No. 10 was

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1 marked for identification.)

2 BY MS. SPRIGGS:

3 Q. And Exhibit 9, these are the exemption
4 certificates provided by J.J. Powell.

5 Are you familiar with these?

6 **A. Yes.**

7 Q. So when these came into the office, were
8 they provided to you?

9 **A. No. They would have gone to Angie**
10 **Cuthburt.**

11 Q. Okay. So when -- let's take -- on the
12 first page, this is the exemption provided by Alpha
13 Fire Department, and it identifies that the
14 purchaser is a state -- let's see -- is a state or
15 local government and that taxable fuel, to which
16 the certificate relates, is purchased for the
17 exclusive use of the purchaser.

18 But it just says taxable fuel. It
19 doesn't identify what they're purchasing.

20 So is there anywhere on the certificate
21 that you know of where the entity indicates what
22 they're purchasing?

23 **A. Only that it's taxable fuel.**

24 Q. Okay. Well, when they say "taxable
25 fuel," what does that mean?

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1 **A. That would mean diesel fuel, gasoline,**
2 **any fuel that we would deliver that is taxable**
3 **they're claiming to be tax exempt.**

4 Q. Okay. So for this first one, then it
5 says -- it checks all orders placed by the
6 purchaser for the period beginning 4/1/08 and
7 ending 4/1/11, and then it says, a period not to
8 exceed 12 calendar quarters will be for the
9 exclusive use of the state or local government.

10 So did J.J. Powell prepare these and
11 provide these to the Alpha Fire Department or did
12 Alpha Fire Department prepare their own?

13 **A. In preparing it -- I'm not sure what you**
14 **mean by preparing it.**

15 Q. Well, did you -- is this a form that J.J.
16 Powell sent to Alpha Fire Department and said, fill
17 this out, or did Alpha Fire Department prepare a
18 form and just send it to you?

19 **A. Could have been either way.**

20 Q. You don't recall which?

21 **A. No.**

22 Q. Okay. So J.J. Powell started selling to
23 Alpha Fire Department on 4/1/08. Is that correct?

24 **A. Probably a long time before that.**

25 Q. Okay. But for this certificate 4/1/08?

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1 **A. Yeah.**

2 Q. And what date is it signed?

3 **A. 7/27/2010.**

4 Q. Okay. So explain what happened between
5 4/1/08 and 7/27/2010 in terms of J.J. Powell was --
6 they were purchasing fuel from J.J. Powell and
7 saying they were tax exempt?

8 **A. They were. And whether or not they had a**
9 **certificate with us that was signed in a different**
10 **date or time, I don't know.**

11 Q. Okay. And the others are similar.

12 But could you just look through and just
13 verify that these are all -- I think there's
14 something. There may be something attached at the
15 back in addition to the claims.

16 Is there a claim for a refund at the very
17 back of yours?

18 **A. Yeah.**

19 **You want to take that?**

20 Q. I'll just make that a separate exhibit.
21 So let's take that one off.

22 But other than the claim for refund --

23 **A. They generally look like exemption**
24 **certificates.**

25 Q. That were submitted?

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1 **A. Yes.**

2 Q. So it's fair to say that for many of the
3 certificates, according to what we have in front of
4 us, J.J. Powell was providing or selling fuel to
5 the government entities, and it appears that they
6 in many cases signed for -- signed their
7 certificate months after the -- they had already
8 purchased the gas or fuel?

9 **A. No, I don't know that that's true or not**
10 **true, because we may have had certificates prior to**
11 **these that would have covered the same period or a**
12 **period that overlaps the periods that these cover.**

13 Q. Okay. But from what we have in front of
14 us --

15 **A. Yep.**

16 Q. -- there were --

17 **A. The dates don't necessarily match.**

18 Q. Okay.

19 (Powell Deposition Exhibit No. 11 was
20 marked for identification.)

21 (Discussion was held off the record.)

22 BY MS. SPRIGGS:

23 Q. So I've handed you Exhibit 11, which are
24 the claims for refund filed by J.J. Powell.

25 And are you familiar with these

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1 documents?

2 **A. I am.**

3 Q. And did you prepare them?

4 **A. I did not.**

5 Q. And do you know, can you read whose
6 signature --

7 **A. That is my signature.**

8 Q. You signed it?

9 **A. I did.**

10 Q. Okay. And can you explain the claims for
11 refund?

12 **A. These, after we went through the appeal
13 process, were denied, we had to file a claim for
14 these refunds so that we could bring this action.**

15 Q. Okay. And on the first claim for the
16 period July 1, 2009 through September 30th, 2009,
17 and under the explanation it says, "Exemption
18 certificates were maintained for a period not to
19 exceed 12 calendar quarters in accordance with
20 Treasury Regulation 48.4041-15(b) as opposed to 12
21 calendar months in accordance with Publication 510.
22 See attached appeal for additional information."

23 So could you explain the grounds for the
24 claim?

25 **A. For the explanation?**

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1 Q. Yes.

2 A. The Treasury Reg 48.4041 states that an
3 exemption certificate is good for a period of 12
4 calendar quarters.

5 Q. So does Treasury Reg 48.4041-15 apply to
6 J.J. Powell?

7 A. I believe so.

8 Q. And was it in effect in 2009 through
9 2010?

10 A. I believe so.

11 Q. Okay. If it was not -- well, strike
12 that.

13 It says the exemption certificates that
14 we just looked at were maintained for a period not
15 to exceed 12 calendar quarters.

16 A. Correct.

17 Q. So that was J.J. Powell's policy?

18 A. That was what we believed to be the
19 federal government's policy.

20 Q. And that's in accordance with the
21 Treasury Regulation you cite?

22 A. Right.

23 Q. Okay. Did you look at any other
24 regulations?

25 A. We would have received information,

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1 particularly from the Pennsylvania Petroleum
2 Association with regard to its regulations.

3 But did we read all the documents that
4 came out of the Internal Revenue Service? No.

5 Q. Was there any discussion about whether
6 this regulation applied to J.J. Powell?

7 A. Not prior to our audit.

8 Q. Okay. And there was no discussion about
9 whether there were other regulations that could
10 apply to J.J. Powell in terms of the exemption
11 certificates?

12 A. No.

13 Q. And the grounds for the claims are the
14 same on all of the claims for refund?

15 A. Correct.

16 MS. SPRIGGS: Why don't we take a short
17 break and I'll see if I have any further questions
18 for you?

19 (Recess was taken from 12:21 p.m. to
20 12:24 p.m.)

21 BY MS. SPRIGGS:

22 Q. I have a few questions about the audit.

23 So when the IRS -- at the conclusion of
24 the audit, did you have a discussion with the
25 agent?

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1 A. I was not there, but the agent had a
2 discussion with Bob Hummel and Doug Goss in our
3 office. And then they called me on the phone, and
4 I talked with Doug Goss.

5 Q. Okay. And what was the -- what did you
6 discuss?

7 A. The discussion with Doug Goss was that
8 the agent believed that these exemption
9 certificates were not maintained properly and that
10 we owed the -- based on his calculations, we owed
11 the IRS roughly \$250,000, but if we paid \$80,000
12 today, that it would be done with and over.

13 Q. Okay. And did you discuss with the
14 agent -- was there a discussion with the agent
15 about the problem with the exemption certificates?

16 A. Not with me.

17 Q. So you didn't have --

18 A. I didn't -- I'm sorry -- I didn't talk
19 with the agent that day. I only talked with Doug
20 Goss.

21 Q. Okay. And then was there a general
22 discussion with J.J. Powell about the exemption
23 certificates?

24 A. At some time later, yes.

25 MS. SPRIGGS: Can we go off the record?

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1 (Discussion was held off the record.)

2 BY MS. SPRIGGS:

3 Q. So was there a discussion at J.J. Powell
4 about the problems with the -- the agent's problems
5 with the certificates?

6 A. Yeah. So we -- once I got back to the
7 office and talked with Bob and Doug and my brother
8 Jeff, we discussed the exemption certificates,
9 decided we should call the Pennsylvania Petroleum
10 Association to see what they know about -- what
11 they knew about the three-year certificates,
12 audits, all that kind of thing, talked with them.

13 They gave me the number to Cloyd Van
14 Hook, who I then talked with, and we started going
15 through this whole process.

16 Q. Did you make any changes in terms of how
17 the exemption certificates are handled?

18 A. Yes.

19 Q. And what happened?

20 A. We now use the form that is suggested by
21 Publication 510 and get them every 12 months.

22 Q. And when did you start with the using
23 that form?

24 A. Immediately after the audit.

25 Q. And what did you do? Did you -- in terms

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1 of did you go and have the exempt entities all fill
2 out new forms, or what did you do?

3 **A. We did. Yep, that's exactly. We just**
4 **sent them out to all the exempt entities and got**
5 **new forms from all of them.**

6 Q. Did they cover any of the periods that
7 are in issue?

8 **A. No.**

9 Q. So it was going forward?

10 **A. Going forward.**

11 Q. So in terms of what's in issue, the
12 documents all remained the same? No changes to
13 that?

14 **A. That's correct. Yes.**

15 Q. You mentioned that J.J. Powell thought it
16 was three calendar quarters?

17 **A. Three calendar years, 12 calendar**
18 **quarters.**

19 Q. I mean 12 calendar quarters.

20 And is there any -- and did you also have
21 alternatives or was that your --

22 **A. No, there was no other alternative.**

23 Q. That was just that was the procedure?

24 **A. The one, yep, federal excise tax**
25 **exemption form that we believed existed.**

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1 Q. And you had been audited before, you
2 said?

3 A. Many, many times.

4 Q. And no one had said anything about the --

5 A. Exemption certificates, no.

6 Q. This was the first time you'd been
7 audited on the exemption certificates?

8 A. No. We'd been audited on the exemption
9 certificates in every audit, federal excise audit,
10 prior to that for many years.

11 Q. Did you -- were you involved with
12 appeals? Did you go to IRS appeals?

13 A. No, I don't think we did.

14 MR. VAN HOOK: He didn't.

15 THE WITNESS: I'm sorry. I don't know
16 the exact process.

17 BY MS. SPRIGGS:

18 Q. You weren't involved in that. Okay.

19 MS. SPRIGGS: I think I have no further
20 questions.

21 MR. VAN HOOK: For him or for anyone?

22 MS. SPRIGGS: No. For him.

23 (Whereupon, the deposition was adjourned
24 at 12:30 p.m.)
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ACKNOWLEDGMENT OF DEPONENT

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I, _____, do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true, correct
and complete transcription of the testimony given by
me, and any corrections appear on the attached Errata
Sheet signed by me.

(DATE)

(SIGNATURE)

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1 State of Pennsylvania

2 County of Franklin, to wit:

3 I, Stacey L. Daywalt, a Notary Public of
4 the State of Pennsylvania, County of Franklin, do
5 hereby certify that the within-named witness
6 personally appeared before me at the time and place
7 herein set out, and after having been duly sworn by
8 me, according to law, was examined by Counsel. I
9 further certify that the examination was recorded
10 stenographically by me and this transcript is a
11 true record of the proceedings.

12 I further certify that I am not of
13 counsel to any of the parties, nor an employee of
14 counsel, nor related to any of the parties, nor in
15 any way interested in the outcome of this action.

16 As witness my hand and Notarial Seal
17 this 22nd day of December, 2014.

18

19

20 Stacey L. Daywalt, Notary Public

21 My Commission Expires: February 10, 2018

22

23

24

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